

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Implementation of the Pay Telephone)	
Reclassification and Compensation)	CC Docket No. 96-128
Provisions of the Telecommunications)	
Act of 1996)	
)	
RBOC/GTE/SNET Payphone Coalition)	NSD File No. L-99-34
Petition for Clarification)	

**REPLY COMMENTS OF GLOBAL
CROSSING TELECOMMUNICATIONS, INC.**

Introduction

Global Crossing Telecommunications, Inc. (“Global Crossing”) submits this reply to comments received on the petitions for reconsideration of the Commission’s Second Order on Reconsideration in the above-docketed proceeding.¹ The comments make clear that the Commission must alter the rules adopted in the Second Order on Reconsideration in significant respects. Virtually none of the comments support the Second Order on Reconsideration. The requests for change coalesce around two alternative proposals: (1) the APCC/RBOC/AT&T/WorldCom proposal (“Consensus Proposal”);² or (2) Global Crossing’s proposal to utilize timing surrogates to define completed calls, supported by Qwest and ASCENT. The Commission should adopt either of these proposals.

¹ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Dkt. 96-128, Second Order on Reconsideration, 16 FCC Rcd. 8098 (2001) (“Second Order on Reconsideration”).

² *See, e.g.*, Proposed Rules annexed to APCC Comments.

The comments also make clear that the Commission should defer the effective of the rules adopted in the Second Order on Reconsideration until it acts upon the proposals currently before it.

Finally, the Commission should reject Flying J's request that the Commission give retroactive effect to whatever rules it adopts. The Commission plainly did not intend to give retroactive effect to the rules and there is no basis for it to do so.

Argument

I. THE COMMISSION SHOULD ADOPT EITHER THE CONSENSUS PROPOSAL OR THE GLOBAL CROSSING PROPOSAL.

There is little question that the rules the Commission adopted need to be substantially modified. The rules do not address – much less cure – the problem that the Commission perceives. The rules fail to do so because they ignore the fact that where there are two or more interexchange carriers (“IXCs”) involved in a single call, the underlying carrier does not have end-to-end visibility of the call and, therefore, cannot tell, in real time, whether a call has been completed. Thus, the same type of controversies over whether payphone service providers (“PSPs”) have been fairly compensated will continue. Thus, the new rules will not provide the certainty that the Commission envisions.

To ameliorate this problem, the commenters have put forth two proposals. The Consensus Proposal would permit resellers to assume the compensation obligation for calls that they terminate under certain circumstances and would provide that, in such circumstances and subject to specific reporting obligations, the first IXC that handles a compensable call would be absolved from liability with respect to that call. The second proposal put forth by Global Crossing would utilize timing surrogates to determine if a call has been completed. Both

proposals provide a regime that would minimize disputes between IXC's and PSPs as to whether PSPs have been fairly compensated as required by section 276 of the Act.

Global Crossing can support either alternative. If the Commission wishes to consider the use of timing surrogates, Global Crossing would have no objection to having the Commission request the industry to perform traffic studies to determine more precisely the appropriate timing surrogates that should be employed for specific types of calls.. If the Commission were to adopt the Consensus Proposal, it must make clear that, if the first IXC complies with the reporting requirements set forth in APCC's proposed rules, then that carrier is absolved from liability with respect to calls completed by its facilities-based resellers.

Either proposal is superior to the rules adopted in the Second Order on Reconsideration.

II. THE COMMISSION SHOULD DEFER THE EFFECTIVE DATE OF THE RULES ADOPTED IN THE SECOND ORDER ON RECONSIDERATION UNTIL IT HAS RULED ON THE PENDING PETITIONS FOR RECONSIDERATION.

It seems fairly self-evident that the Commission must make significant changes to the rules it adopted in the Second Order on Reconsideration. In these circumstances, it makes little sense for the Commission to retain the currently-scheduled effective date of November 23, 2001 for those rules. Neither IXC's nor PSPs will benefit from having to conform their conduct to rules that will have a relatively short life and then be required to adjust to an entirely new set of rules. Thus, the Commission should defer the effective date of the rules until it acts on the pending petitions for reconsideration.

III. THE COMMISSION SHOULD REJECT FLYING J's REQUEST THAT THE COMMISSION DECLARE THAT ITS NEW RULES ARE RETROACTIVE TO OCTOBER 7, 1997.

Of all the commenters, only Flying J suggests that the Commission intended its rules to be retroactive to October 7, 1997.³ The Commission should reject Flying J's proffered interpretation. The Commission plainly did not intend that the rules have retroactive effect. In fact, on the very day that the Commission adopted the Second Order on Reconsideration, it also adopted a companion order in the Bell Atlantic/Frontier proceeding that interpreted the rules as they currently exist.⁴ As such, there is no basis for Flying J's claim that the rules adopted in the Second Order on Reconsideration should have retroactive effect.

Conclusion

For the foregoing reasons, the Commission should act upon the petitions for reconsideration in the manner suggested herein.

Respectfully submitted,

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³ Flying J at 22-23.

⁴ See *Bell Atlantic-Delaware, Inc. v. Frontier Communications Services, Inc.*, File No. E-98-48, Memorandum Opinion and Order, FCC 01-110 (April 5, 2001).

Certificate of Service

I hereby certify that, on this 22nd day of October, 2001, copies of the foregoing Reply Comments of Global Crossing Telecommunications, Inc. were served by first-class mail, postage prepaid, upon the parties on the attached service list.

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